UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

MAURICE BROWN,)
Plaintiff,)
v.) Case No. 2:15-cv-00361-JVB-JEM
INDIANA BUREAU OF MOTOR)
VEHICLES, IBMV,)
)
Defendant.	

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) Defendant Indiana Bureau of Motor Vehicles ("BMV"), by counsel, Philip A. Gordon, Deputy Attorney General, requests that this Court dismiss Plaintiff's Complaint because this Court lacks subject-matter jurisdiction and Plaintiff fails to state a claim upon which relief can be granted. This Motion is timely as Defendant's answer deadline has not yet passed. In support, the Defendant shows the court as follows:

- 1. On September 21, 2015, Plaintiff Maurice Brown filed his petition for redress of grievance regarding his suspension of driving privileges.
- 2. Plaintiff's complaint complains of an administrative decision and an administrative request for material error review to which the agency has yet to make a final determination. *See* Dkt. No. 1, p. 2, ¶ 12.
- 3. Plaintiff's petition purports to make the suspension of his driving privileges for a three month period into a federal constitutional question, all while his request for material error review remains pending. As such, his claims are not ripe for

adjudication as he fails to sufficiently allege the deprivation of a constitutional right,

and therefore there is no federal question to be addressed.

4. Defendant has Eleventh Amendment Immunity from suit.

5. In addition, Plaintiff's petition for redress of grievance is not sufficient for the

purposes of complying with Rule 8(a)(2) of the Federal Rules of Civil Procedure.

6. Accordingly, Plaintiff's Complaint should be dismissed pursuant to Federal Rule of

Civil Procedure 12(b)(6) because it fails to state a claim against this Defendant, and

pursuant to Federal Rule of Civil Procedure 12(b)(1) because this Court lacks subject

matter jurisdiction.

7. A memorandum of law is filed contemporaneously with this Motion and is

incorporated herein by reference.

WHEREFORE, the BMV respectfully request that the Court dismiss Plaintiff's

Complaint, and for all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER

Indiana Attorney General

Attorney No. 1958-98

By: /s/ Philip A. Gordon

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, a copy of the foregoing *Defendant's Motion to Dismiss Plaintiff's Complaint* was filed electronically using the Court's CM/ECF system. Parties may access this filing using the Court's system.

I also certify that a copy was mailed, by first class U.S. Mail, postage prepaid and properly addressed to the following non-CM/ECF participant:

Maurice Brown 7338 Calumet Avenue Hammond, IN 46324 *Pro Se Plaintiff*

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